

VIA ELECTRONIC TRANSMISSION

July 27, 2021

Mr. Drew Hirshfeld
Commissioner for Patents
Performing the functions and duties of the Under Secretary of Commerce for Intellectual
Property and Director
United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Mr. Hirshfeld:

We write you today to request a study regarding the feasibility of establishing a small claims court for patent cases. In December 2012 then Director David Kappos issued a Federal Register notice requesting public comment on “whether the United States should develop a small claims proceeding for patent enforcement.”¹ Since Director Kappos’s tenure, the USPTO has not followed up on that notice. We believe it is warranted to refocus on this important matter.

Patents are the life-blood of innovation and are critical to small and medium sized enterprises and innovative startups. This is particularly true for firms and enterprises owned by people of color, women, and other underrepresented groups. Unfortunately, the very enterprises that are most dependent on intellectual property protection often find their patents infringed by competitors, usually larger, well-funded firms. These startups then face a difficult choice: pursuing district court litigation, which can easily exceed a million dollars and take three to five years, or letting their patent be infringed; thereby allowing competitors to capture the market and destroy their economic viability.

This is a situation that no patent owner—especially independent inventors and small businesses—should face. That is why several prominent intellectual property law associations supported studying the feasibility of a small claims tribunal in 2012 and 2013, including the American Bar Association's Section on Intellectual Property Law, the American Intellectual Property Law Association, and the United Inventors Association. Given the dynamics of the current litigation situation and the passage of time since the 2012 notice we believe it is time to more formally study this issue.

Therefore, we request that you engage and fund the Administrative Conference of the United States (ACUS) to study and recommend whether and how such a small claims tribunal could be established, including the proper forum (e.g., whether within an existing federal institution or independently), and what types of remedies such a forum could provide to small and medium-sized enterprises and independent inventors. As you know, the ACUS is an independent federal agency that convenes expert representatives from the public and private sectors to promote improvements in efficiency, advocacy, and fairness. ACUS typically works with national legal scholars and federal institutes to conduct research and prepare studies working with legal

¹ See 77 Fed. Reg. 74830 (Dec. 18, 2012).

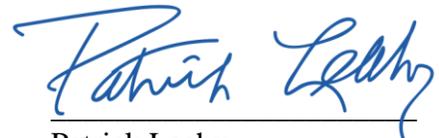
scholars to provide non-partisan, well-documented, and unbiased recommendations to the Administration, Congress, and the American public. We request that the ACUS study and recommendations be conducted with input by all stakeholders and completed within and provided to the Senate Judiciary Committee no later than December 31, 2022.

Thank you for your prompt attention to this matter. We look forward to the conclusions of your study and to working together to ensure that all inventors have an opportunity to efficiently enforce their intellectual property rights. If you have any questions, please do not hesitate to contact us.

Sincerely,



Thom Tillis
United States Senator



Patrick Leahy
United States Senator



Tom Cotton
United States Senator



Mazie K. Hirono
United States Senator



Christopher A. Coons
United States Senator



John Cornyn
United States Senator